Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of:	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 93-215
	)	CS Docket 94-28
Rate Regulation	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

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1. The Cable Telecommunications Association ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. Introduction. In these comments, CATA addresses three matters raised by the Commission in its Notice: abbreviated cost of service showings, the incentive upgrade plan, and the productivity offset factor. All of these proposals are of concern because they relate to the ability of cable television systems to achieve future growth in the new regulated environment. We endorse the concept of an abbreviated cost-of-service showing, although we believe that a simpler more

efficient means of raising rates in order to upgrade systems would be to treat the additional costs as external costs and permit pass-throughs. Moreover, we urge the Commission to permit rate increases to be related to the length of time necessary to complete the upgrades. CATA also endorses the concept of an incentive upgrade plan, but believes that unless the Commission eliminates its uncertainties, very few systems will take advantage of the experiment. Finally, we urge the Commission to abandon its notion of a productivity offset because of its chilling effect on cable's prospect for growth, much less continued quality service.

3. Network upgrades. The Commission has tentatively adopted and requested comment on an abbreviated cost-of-service plan designed to permit the financing of upgrades to the cable plant for the purpose of improving the quality of service or providing additional services. The Commission would permit cable operators to submit data on the upgrade costs only, and an appropriate rate increase justified by these costs would then be added to the system's capped benchmark rate. CATA certainly welcomes this approach, although we believe that permitting upgrade costs as external pass-throughs remains a simpler and more reasonable course, at least for systems whose capped rates have already been determined pursuant to a cost-of-service showing. For such systems, by definition, it cannot be said that present rates already reflect capital recovery generated in an

unregulated environment. These systems would already have shown that their costs for the existing system justify more than the benchmark rate. Under these circumstances, one would assume that any additional costs would require higher rates and such costs could be treated as external without the necessity of even an abbreviated cost-of-service proceeding.

4. CATA is also concerned that, abbreviated though it may be, any cost-of-service showing is a burdensome undertaking. Moreover, historically, cable operators have significantly upgraded their systems with some regularity in order to take advantage of rapidly evolving technical developments. In a sense then, the Commission plan would "sentence" every system to engage in a cost-of-service proceeding, an unpleasant eventuality for both cable systems and regulators. The Commission's contention that many systems will not require the option of the abbreviated cost-of-service showing seems ill-founded. Significant system upgrades are financed by borrowing money. The Commission seems wedded to the concept (certainly unproven) that cash flow generated in the new regulated environment will be sufficient to attract funds for new development. But, in fact, the current rate regulations have caused many systems to attempt to extend existing debt because cash flow has been reduced. There seems little question that creditors will require some assurance of additional cash flow in order to justify new debt for system upgrades.

5. The Commission has determined that rate increases justified by an abbreviated cost-of-service proceeding cannot be assessed until the system upgrade is complete and subscribers are receiving its benefits. CATA believes that the Commission should adopt a more flexible approach. Although upgrades for systems with a small physical plant can be completed in a short period of time, perhaps a few months, larger systems obviously require more time. It is not unusual for system rebuilds to take several years. While banks may defer payment of principal for a year, the fact is that in some cases systems will have to begin repaying both principal and interest well before the upgrade is completed. If a system can use an abbreviated cost-of-service showing to demonstrate that it needs higher rates to finance an upgrade, then it ought to be able to begin paying back what it needs to borrow in order to do the job.

6. Incentive upgrade plan. As another approach to the problem of how rate regulation may best deal with the necessity for system upgrades, the Commission has suggested that cable operators freeze their present rates, (or freeze them subject to inflation and external cost adjustment), and promise to maintain service quality for a term of five years, in return for which they would be able to add new tiers of regulated service at higher rates. Intuitively, this program has a certain appeal, yet there are various factors that must be addressed in order for any cable operator to make a reasonable proposal.

7. Clearly, the incentive upgrade plan is designed to facilitate some level of system expansion, but it is unclear how much. The Commission was somewhat specific with respect to abbreviated cost-of-service showings for upgrades. The upgrade has to be "significant," the example being an expansion of bandwidth capacity and conversion to fiber optics or system rebuilds. Must the same level of upgrade be undertaken in order to attempt an incentive upgrade plan? May such a significant upgrade be the basis of an incentive upgrade plan? CATA believes that cable operators should have the choice of embarking on an incentive upgrade for any level of upgrade.

8. It is the Commission's intention that as part of its "contract" with subscribers in order to take part in an incentive upgrade plan, a cable operator would promise that rates for current services would be kept "stable and reasonable" -- no higher than before the contract. The Commission then adds, parenthetically, that stable and reasonable "might" include adjustments for inflation and external cost changes. The cable operator would be given "substantial flexibility" in setting rates for new services or tiers of service.
Obviously, the interplay between charges for current services and charges for new services is crucial if there is to be any incentive to formulate an upgrade plan.

9. When the Commission states that inflation and external cost adjustments "might" be permitted, we presume it is saying that rate adjustments will become a variable depending on the other terms of the "contract," not that the question of permitting rate adjustments has yet to be determined in this proceeding. If rate adjustments are permitted then it appears that, for its part, the cable operator is contracting only not to attempt a cost-of-service showing to justify higher rates. If rate adjustments are not permitted, then the amount of service to be added and the degree to which the operator will be afforded substantial flexibility in setting rates for the new service, become critical factors in determining whether any incentive exists at all.

10. Another element of uncertainty is the prospect that after a term of years (the Commission has proposed 5 years), a cable operator will be faced with a "review" of rates. It appears that such a review may result in an unspecified degree of rate reduction for the new services offered pursuant to an upgrade incentive plan. The Commission should not be optimistic that many systems will choose to seek, much less obtain, financing for upgrades, when looming on the horizon is the specter of reduced cash flow.

11. The Commission's economic theory behind the incentive upgrade plan is that permitting rate flexibility is an

appropriate way to encourage entrepreneurial risk. Indeed. In the unregulated environment of the past this theory was proved many times. The Commission goes on to presume that the rates for new tiers of service added under an incentive upgrade plan will be indirectly regulated by the price cap on existing tiers of service because the added services will effectively compete with the old ones. This theory is probably correct also. We cannot help but note that the Commission could have used it as a basis for regulating existing cable program service tiers.

12. It is clear that, to the greatest extent possible, the Commission envisions the upgrade incentive concept as a return to the marketplace -- a substitute for its detailed body of rate regulations. CATA subscribes to such a view. But for any market incentive to succeed, it must balance the prospect of rewards against the degree of risk that will be assumed. So far, in the incentive upgrade proposal this does not appear to be the case. There is no "feel" for the degree to which rates for existing services will be frozen, the degree of flexibility that will be permitted for added services, or the length of time during which higher rates for such services might be charged. As a result, it is difficult to determine how an incentive upgrade plan would accommodate a cable operator's ability to borrow and repay capital. Although it is possible to envision limited circumstances in which some systems might determine that the risks inherent in the present incentive upgrade scheme are worth

the rewards, it is difficult to endorse this imaginative plan to the extent we would prefer.

13. Productivity offset. The Commission giveth with one hand and taketh away with another. Having attempted to create incentives for cable operators to improve their quality of service and to upgrade and expand their systems, the Commission now would penalize these operators for any efficiencies gained in the process. Cable systems have been characterized, historically, by their willingness to embrace new technology, expand their channel capacities and provide additional services to their customers. The rapid evolution of system design and marketing strategies has placed the cable industry on the cutting edge of introducing what used to be called the "wired nation," and what is now fashionably referred to as the "information superhighway." Those who seek this "holy grail" of communications will be expected to take significant economic risks. Some technological designs will not prove themselves and will fall by the wayside. Marketing presumptions will be tested and many will fail. The Commission simply has no basis to presume that, in the course of what is hoped to be the most rapid expansion of cable growth and experimentation, there will be regular efficiency gains that justify income reduction. It can very well presume, however, that a promise of income reduction can only slow, if not halt, cable growth.

14. Congress clearly stated that it did not intend cable to be regulated in the same manner as telephone companies. It understood that, whatever the future may hold, for now and the foreseeable future, cable companies are not like telephone companies and should not be similarly regulated. It is difficult to imagine that cable operators will be able to raise funds necessary to introduce new technology against a constant drumbeat of two percent rate reductions. Congress expected the Commission to take action that would lower the rates charged by many cable systems. It did not expect the Commission to stunt the growth of cable by applying the full panoply of telephone regulation. We do not doubt the Commission's expertise and experience in regulating the nation's telephone companies. But familiarity with telephone regulation is simply not sufficient reason for presuming that this form of regulation is suitable for cable.

15. CATA urges the Commission to abandon its proposal to adopt a productivity offset for cable television systems. What may have been appropriate for a stable industry characterized by incremental technological change and guaranteed a rate of return on its investment, should not be applied to an industry whose growth is rapid, whose risks are great, and whose return on investment potential has become anything but guaranteed. By its other proposals in this proceeding, the Commission is attempting to stimulate cable growth. The productivity offset proposal is a step in the opposite direction.

16. Conclusion. CATA favors the Commission's efforts to address new proposals such as abbreviated cost-of-service proceedings and the incentive upgrade plan designed to promote cable expansion. We believe, however, that the necessity of creating incentives for system growth is directly related to the disincentives caused by an extensive program of rate regulation. As we note above, CATA believes the Commission should attempt to remove the risks and uncertainties associated with these proposals. Moreover, at the same time the Commission is attempting to stimulate cable growth, it should not be making that growth more uncertain by the threat a productivity offset.

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS
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